

race. There is a cap with respect to a couple of other kinds of discrimination here. There's no limitation in the federal law for compensatory damages for past injuries, only for future injuries or punitive damages. We don't have punitive damages in Nebraska. And my guess is that this cap probably relates more to punitive damages than anything else that I can think of, and I'll tell you why; because when a court awards punitive damages they take into account, when it goes to a judge, it can also go to a jury, but they take into account the size of the offender, it's true. The leading case on punitive damages is the Ford Pinto case, where Ford constructed a car which they knew, if struck from the back, had not a great deal of support to the back, would create a certain number of fireballs, and they did a little math, and they said, look, how many times is this going to happen, how many times are we going to lose in court for wrongful death for people who get burnt up, and how much does it cost to put a steel bar in front of the gas tank? They did a little quick math and they figured it was more expensive to put the steel bar behind the gas tank to stop it from turning into a fireball than it would to pay off about 150 cases of when the Pinto exploded and burned people up. So they didn't put the steel bar there. When it came to court the judge...it was taken to a judge rather than the jury. The judge awarded damages sufficient to take the profit out of that kind of business decision. There was about \$135 million of punitive damages. Why did it have to be that size? Because that was the size necessary to take the profit out of this kind of thinking, corporate thinking. My guess is the stairstep has the same effect here. If we have punitive damages the amount of punishment that you're going to administer for people who, by the way, this is not unintentional, this provision is intentional discrimination, this federal law, that you probably were targeting it to the size of the firm that was going to suffer the sanction. But in Nebraska we don't have punitive damage dollar one, all we have are actual damages. And for that reason I think the analogy between what the federal law has in its stairstep and what we have really breaks down. It would be true that you'd want a stairstepped approach if you were trying to limit punitive damages on firms so that you could get to punishing, but not over punishing a bunch of firms, it's true. But in this case, in Nebraska we don't have that at all. I'd suggest that we vote no on the Witek amendment, then I'd suggest that we pause in the advancement of 124 to sit down and meet with Senator Hohenstein and perhaps a member of the Attorney General's staff to work through the Attorney General's Opinion